

BEFORE THE MISSOURI BOARD FOR THERAPEUTIC MASSAGE

In The Matter Of:)	
)	
MISSOURI BOARD OF THERAPEUTIC MASSAGE,)	
Petitioner,)	No. 09-1483 TM
)	
v.)	
)	
JUSTIN LEONARD)	
Respondent)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

STATEMENT OF THE CASE

This matter appears before the Missouri Board of Therapeutic Massage ("the Board") pursuant to a Decision of August 16, 2010 issued by the Administrative Hearing Commission issued in the above-styled case. A hearing on the matter was held on Sunday, December 5, 2010, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, to determine the amount of discipline to impose on Justin Leonard (Leonard) as prescribed by the Administrative Hearing Commission. The Board was represented by Greg Mitchell. See page 18 of the transcript. Although notification of the hearing was personally delivered to respondent on November 2, 2010, neither respondent nor counsel for respondent was present at the hearing. See pages 4, 11, and 12 of the transcript. Leonard received a hand delivered notice of the hearing and neither filed a request for a continuance, nor did he appear at the hearing. See pages 11 and 12 of the transcript. Mr. Leonard also did not appear when the Administrative Hearing Commission conducted its hearing in this matter. See page 17 of the transcript.

All members of the Board that participated in this decision certified that he or she had read the Decision of the AHC. See pages 5 and 6 of the transcript.

FINDINGS OF FACT

1. The Board is an agency of the State of Missouri created and established pursuant to § 324.243 RSMo, for the purpose of administering and enforcing the provisions of Sections 324.240-324.275 RSMo, as those provisions relate to the practice of therapeutic massage.

2. On August 16, 2010, the Administrative Hearing Commission issued its Decision in this matter, which is incorporated by reference. In that Decision the AHC found that Leonard violated Sections 324.262.2 (1), (4), and (5) RSMo. See Exhibit B and pages 4, 9, and 16 of the transcript.

3. Leonard was licensed to practice therapeutic massage, License Number 2003018498. See page 4 of the transcript and the Decision of the AHC.

4. In its Decision the AHC identified those factual circumstances that led the AHC to decide that Leonard violated Chapter 324 and this Board considered those factual conclusions as true in rendering the decision reflected in this Order. The AHC determined that Leonard is subject to discipline by this Board because he made unwanted sexual advances, massaged his clients' breasts and genitals, and committed crimes of moral turpitude. See Exhibit B, page 1 of the Decision of the AHC, and pages 7, 8, 9, and 16 of the transcript. The examples of conduct by Mr. Leonard as determined by the AHC are egregious, and reflect that Mr. Leonard is subject to appropriate discipline by this Board.

CONCLUSIONS OF LAW

5. The Board has jurisdiction over this proceeding in that the Administrative Hearing Commission has determined that the Board has cause to discipline the license of the respondent. State Board of Registration for the Healing Arts v. Masters, 512 S.W.2d 150, 160-161 (Mo. App., K.C.D. 1974).

6. Respondent's license to practice therapeutic massage, is subject to revocation, suspension, probation, or censure by the Board pursuant to the provisions of Section 324.262.2 (1), (4), and (5) RSMo.

DECISION AND ORDER

THEREFORE, having carefully and fully considered all the evidence presented at the hearing before the Board, and giving full weight to the Findings of Fact and Conclusions of Law, it is the Decision of the Board that the license formerly held by respondent Leonard is hereby **REVOKED**.

This Order shall be maintained as an open and public record of the Board, as provided in Chapters 610 and 324 of the Missouri Revised Statutes.

The Board further orders the Executive Director of the Board to direct a copy of this Findings of Fact, Conclusions of Law and Disciplinary Order, to respondent, in the name of and on behalf of the Board and to affix the seal of the Board hereto.

SO ORDERED this 20th day of December 2010. This Order is effective immediately.

MISSOURI BOARD OF THERAPEUTIC MASSAGE

By



Loree Kessler, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



BOARD OF THERAPEUTIC MASSAGE,

Petitioner,

vs.

JUSTIN D. LEONARD,

Respondent.

No. 09-1483 TM

DECISION

Justin D. Leonard is subject to discipline because he made unwanted sexual advances, massaged his clients' genitals and breasts, and committed crimes of moral turpitude.

Procedure

The Board of Therapeutic Massage ("Board") filed a complaint on November 3, 2009, seeking this Commission's determination that cause exists to discipline Leonard's license to practice massage therapy. Leonard was personally served on December 15, 2009 and did not file an answer.

The Board mailed to Leonard a request for admissions on January 14, 2010. Leonard did not respond to the request.

This Commission convened a hearing on the complaint on April 5, 2010. Attorney Gregory C. Mitchell represented the Board. Leonard did not appear and was not represented by counsel.

The matter became ready for our decision on May 21, 2010, the last date for filing a written argument.

Findings of Fact

1. The Board issued Leonard a student massage therapy license in July 2003 and then a permanent massage therapy license in May 2007. This license was current at all relevant times, and it expired on January 31, 2009.

Victim 1

2. On October 13, 2008, Leonard administered a massage to Victim 1 at Allure Salon and Day Spa in Kansas City.

3. Victim 1 scheduled a 1-hour massage. Towards the end of the massage, Leonard asked her if she would like to extend her massage by thirty minutes. Victim 1 agreed to the extension.

4. Leonard briefly left the massage room and returned for Victim 1's extension of thirty minutes. At this point, Leonard's tone changed.

5. Leonard massaged Victim 1's breasts and made her uncomfortable. Leonard also told Victim 1 that she had beautiful breasts as his breathing became heavier.

6. Victim 1 responded to Leonard's actions by pretending to be asleep in order to show him she was not interested in his advances. Instead, she felt his breath on her face. She opened her eyes to see Leonard's open mouth, exposing his tongue piercing. Leonard stated, "Let me show you what I can do with this. Let me show you how good this feels."¹

7. Victim 1 immediately told Leonard that the massage was over and to leave the massage room. Leonard responded by asking, "Why?" Victim 1 again told him to leave.

¹Ex. 2.

Victim 2

8. On February 17, 2008, Leonard administered a massage to Victim 2 at Beauty Brands in Kansas City.

9. In the massage room, Victim 2 laid on her back, wearing only thong underwear underneath a sheet.

10. Leonard placed his hands underneath the sheet and ran his hands down Victim 2's chest, between her breasts, and on her shoulders. Leonard then massaged Victim 2's leg, moved to her inner thigh, and then her vagina.

Victim 3

11. On October 10, 2008, Leonard administered a massage to Victim 3 at Beauty Brands.

12. In the massage room, Victim 3 disrobed and lay under a sheet in a supine position.

13. During the massage, Leonard placed his hands on Victim 3's breasts, underneath the sheet. Victim 3 responded by telling him that this was not appropriate and to stop.

14. Leonard then moved to Victim 3's calves and worked his way up to her groin and vagina. Victim 3 responded by telling Leonard not to do that.

15. Leonard asked Victim 3 to turn over on her stomach, which she did. During this portion of the massage, Leonard rubbed his groin next to Victim 3's leg while he was partially erect.

Victim 4

16. On September 23, 2008, Leonard administered a massage to Victim 4 at Massage Envy in Kansas City.

17. In the massage room, Victim 4 disrobed to her panties and lay on a table underneath a sheet.

18. Leonard massaged the front of Victim 4's body and then told her to turn over and lie on her stomach. Leonard continued the massage from Victim 4's waist down to her legs.

19. By this time, Victim 4 was extremely relaxed and half asleep when Leonard put his fingers underneath Victim 4's panties, inserted his fingers inside her vagina, and undid his belt buckle.

20. Victim 4 immediately yelled, "Stop! What are you doing? That's not okay." Leonard acted surprised and replied, "Oh I thought you might be into it[.]" Victim 4 replied, "No. Get out of here."² Leonard then fastened his belt and walked out of the massage room.

Victim 5

21. On May 12, 2008, Leonard administered a massage to Victim 5 at Beauty Brands in Kansas City.

22. In the massage room, Victim 5 undressed and lay on a table underneath a sheet.

23. Leonard massaged Victim 5's sternum and arms and asked her to turn over. Leonard next massaged Victim 5's back and legs.

24. While massaging Victim 5's left leg, Leonard brushed against her vagina. Leonard moved to Victim 5's right leg and massaged her inner thigh while constantly rubbing against her vagina.

25. Leonard reached underneath Victim 5 and massaged the exterior of her vagina. Victim 5 reacted by clenching her legs together and pulling her arms underneath her.

26. Leonard ended the massage and told Victim 5 that it was his turn for a massage. Victim 5 nervously laughed, and Leonard stated, "No, I am serious."³ Victim 5 again nervously laughed, to which Leonard told her to get dressed.

²Ex. 1.

³Ex. 3.

Court Dispositions

27. On June 18, 2009, Leonard pled guilty in the Circuit Court of Platte County to the Class C felony crime of deviate sexual assault⁴ and the Class A misdemeanor crime of first degree sexual misconduct⁵ for his actions with Victim 1, Victim 2, and Victim 3.

28. On June 3, 2009, Leonard was found guilty in the Circuit Court of Jackson County of two counts of the Class C felony crime of deviate sexual assault for his actions with Victim 4.

29. On July 16, 2009, Leonard pled guilty in the Circuit Court of Platte County to the Misdemeanor A crime of first degree sexual misconduct for his actions with Victim 5.

Conclusions of Law

We have jurisdiction of the complaint.⁶ The Board has the burden to prove facts for which the law allows discipline.⁷ Leonard failed to respond to the Board's request for admissions, which it served on Leonard on January 14, 2010. Leonard's failure to answer the request for admissions establishes the matters asserted in the request, and no further proof is required.⁸ That rule applies to all parties, including those acting without an attorney.⁹ Leonard's deemed admissions are supported and explained by testimony and exhibits presented at the hearing. But Missouri case law instructs that in cases before us under § 621.045, RSMo Supp. 2009, we must "separately and independently" determine whether the facts constitute cause for discipline.¹⁰ Therefore, we independently assess whether the established facts allow discipline under the law cited.

⁴Section 566.070. Statutory references are to RSMo 2000 unless otherwise noted.

⁵Section 566.090.

⁶Section 621.045, RSMo Supp. 2009.

⁷*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁸Supreme Court Rule 59.01, as applied to our proceedings by § 536.073.2 and 1 CSR 15-3.420(1); *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985); and *Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

⁹*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

¹⁰*Kennedy v. Missouri Real Estate Comm'n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

The Board cites § 324.262.2(1), (4) and (5), which allow discipline for:

(1) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of the profession regulated pursuant to sections 324.240 to 324.275, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

* * *

(4) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession regulated by sections 324.240 to 324.275;

(5) Violation of, or assisting or enabling any person to violate, any provision of sections 324.240 to 324.275, or of any lawful rule or regulation adopted pursuant to sections 324.240 to 324.275[.]

Subdivision (1) – Crimes Related to the Profession and Moral Turpitude

Leonard either pled guilty to or was found guilty of two crimes over the course of his five victims – deviate sexual assault and first degree sexual misconduct.

With Victim 1, Leonard requested that she extend her massage by thirty minutes. After she did this, he began to massage her breasts and make remarks that made her feel uncomfortable. These acts were committed while Victim 1 was in a vulnerable position, lying on a bed in a massage room alone with Leonard. Victim 1 placed herself in this vulnerable position to obtain a professional massage. It is logical to assume that she relied on Leonard's licensure status to expect him to perform the proper functions and duties of a licensed massage therapist. Instead, Leonard abused his professional position to commit two sexual crimes against Victim 1.

Likewise, Victim 2 placed herself in a vulnerable position by disrobing to her panties and lying on a bed in a massage room alone with Leonard. Victim 2 placed herself in this vulnerable

position to obtain a professional massage. It is logical to assume that she relied on Leonard's licensure status to expect him to perform the proper functions and duties of a licensed massage therapist. Instead, Leonard used his position to commit two sexual crimes against Victim 2 by running his hands down her chest, between her breasts, and touching her vagina.

Similarly, Victim 3 placed herself in a vulnerable position by completely disrobing and lying on a bed in a massage room alone with Leonard. Victim 3 placed herself in this vulnerable position to obtain a professional massage. It is logical to assume that she relied on Leonard's licensure status to expect him to perform the proper functions and duties of a licensed massage therapist. Instead, Leonard used his position to commit two sexual crimes against Victim 3 by placing his hands on her breasts and touching her labia.

Like Victim 2, Victim 4 placed herself in a vulnerable position by disrobing to her panties and lying on a bed in a massage room alone with Leonard. Victim 4 placed herself in this vulnerable position to obtain a professional massage. It is logical to assume that she relied on Leonard's licensure status to expect him to perform the proper functions and duties of a licensed massage therapist. Instead, Leonard used his position to commit two sexual crimes against Victim 4 by inserting his fingers inside her vagina.

Like Victim 3, Victim 5 placed herself in a vulnerable position by undressing and lying on a bed in a massage room alone with Leonard. Victim 5 placed herself in this vulnerable position to obtain a professional massage. It is logical to assume that she relied on Leonard's licensure status to expect him to perform the proper functions and duties of a licensed massage therapist. Instead, Leonard used his position to commit a sexual crime against Victim 5 by touching her vagina numerous times during the massage and massaging her vagina.

Because Leonard committed these crimes while performing massage therapy, they are offenses reasonably related to the functions and duties of a massage therapist. Consequently, Leonard's license is subject to discipline under § 324.262.2(1).

The Board also argues that Leonard's crimes are crimes of moral turpitude. In *Brehe v. Missouri Dep't of Elementary and Secondary Education*,¹¹ a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:¹²

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and
- (3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.¹³

We previously determined that deviate sexual assault is a Category 1 crime.¹⁴

Consequently, Leonard also committed crimes of moral turpitude when he committed his numerous acts of deviate sexual assault and first degree sexual misconduct. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."¹⁵

¹¹213 S.W.3d 720 (Mo. App., W.D. 2007).

¹²*Id.* at 725 (quoting *Twentieth Century-Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)).

¹³*Id.*

¹⁴*Department of Health and Senior Services v. Jeremy Brady*, No. 08-1079 DH (Sept. 26, 2008).

¹⁵*In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

Under Missouri's standards of decency and good morals, we can conclude that the crime of deviate sexual assault necessarily involves an act of vileness and depravity. For a male to touch the genitals or breasts of another person without his or her consent in a sexual manner is base, vile, and depraved, and in contravention of the basic and social duties and customs owed to others and our society, irrespective of whether the victim is a co-worker, associate or stranger.

We find Leonard subject to discipline under § 324.262.2(1) because he used his position as a massage therapist to commit crimes that are reasonably related to the functions and duties of a massage therapist and crimes of moral turpitude.

Subdivision (4) – Misconduct

Misconduct means "the willful doing of an act with a wrongful intention[;] intentional wrongdoing."¹⁶ Leonard was in complete control of his actions when he committed the crimes for which he either pled guilty or was found guilty for the aforementioned five victims. We find that Leonard's actions were willful. Consequently, his actions are misconduct.

We find Leonard subject to discipline under § 324.262.2(4) for misconduct.

Subdivision (5) – Violation of Regulation

Regulation 20 CSR 2197-3.010 states:

(4) A licensee shall conduct business with honesty and integrity to include the following:

* * *

(H) Shall not engage in sexual conduct with a client(s) during a massage session;

* * *

(K) Shall not massage the genitals;

¹⁶*Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

(L) Shall not massage the breast unless ordered by a physician prescription or by documented clinical indication. Such documentation shall be included in the client's record and the massage shall be performed by a licensee that is certified or has advanced training in techniques related to therapeutic treatment of mammary tissue[.]

Leonard engaged in sexual conduct with Victim 4 by placing his fingers in her vagina.

Consequently, Leonard violated 20 CSR 2197-3.010(4)(H).

Leonard massaged the genitals of Victim 2, Victim 3, and Victim 5. Consequently, he violated 20 CSR 2197-3.010(4)(K).

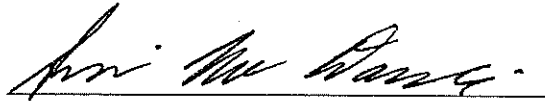
Leonard massaged the breasts of Victim 1 and Victim 3. Based on the eventual criminal charges and guilty plea, we find that Leonard did not have the victims' consent or a physician's prescription to massage their breasts. Consequently, Leonard violated 20 CSR 2197-3.010(4)(L).

We find that Leonard is subject to discipline under § 324.262.2(5) for violating 20 CSR 2197-3.010(4)(H), (K), and (L).

Summary

There is cause to discipline Leonard's massage therapy license under § 324.262.2(1), (4), and (5).

SO ORDERED on August 16, 2010.


SREENIVASA RAO DANDAMUDI
Commissioner